**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE J.B.KOSHY**
**&**
**THE HONOURABLE MRS. JUSTICE K.HEMA**

**THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929**

**MFA.No. 1327 of 2002()**
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**OP(MV).1083/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA**
**.....**

**APPELLANT: PETITIONER:**
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**A. STEPHEN, S/O. ANTONY, WOOD LAND ESTATE, MEMMALA KARA, PALLIKUNNU P.O., PEERMADE, IDUKKI DISTRICT.**

**BY ADV. SRI.P.RAVINDRA BABU**

**RESPONDENTS: RESPONDENTS:**
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1. **NADARAJAN, S/O. GOVINDAN, KOMALAVILASAM HOUSE, EDAMUNN KARA, PATHANAPURAM TALUK.**

2. **RAJAN BABU, KUNNIL MOTOR SERVICE, MARAMOM.**

3. **THE NATIONAL INSURANCE CO.LTD., KOZHENCHERY BRANCH OFFICE, KOZHANCHERRY ROAD, P.B.NO.67.**

**R3 BY ADV. SRI.E.M.JOSEPH**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 15/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**J.B. Koshy & K.Hema, JJ.**

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**M.F.A.No. 1327 of 2002**

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**Dated this the 15th day of November, 2007**

**Judgment**

**Koshy,J.**

Appellant/Petitioner while driving a jeep sustained injuries in an accident when the jeep collided with a bus driven by the first respondent and insured by the third respondent insurance company. The tribunal though, after considering the evidence, fixed compensation at Rs.65,356/- with 9% interest per annum, but, rejected the application as negligence was not proved. The tribunal mainly relied on the scene mahazar for such a finding. It was argued that scene mahazar is prepared after the accident and exact spot of the accident cannot be found out from the scene mahazar and due to the impact of the hit, there is likelihood that smaller vehicles may move further. Oral evidence was adduced regarding the cause of accident. The claimant himself was examined. PW2 was also examined. Their evidence was not shaken. They gave evidence that the accident occurred only because of the rash and

negligent driving of the vehicle insured by the third respondent insurance company. Lorry driver was not examined. Evidence shows that it was a head-on collusion in straight road and, at least, 50% liability ought to have been fixed on both sides. The Apex Court in Bijoy Kumar Dugar v. Bidyadhar Dutta and others (AIR 2006 SC 1255) held that when there is head-on collusion, negligence can be fixed equally. If any one of the drivers were alert, accident could have been avoided. Police charge-sheeted only the bus driver, but, scene mahazar shows that the jeep was slightly on the wrong side.

2. In the above circumstances, we are of the opinion that negligence can be apportioned at 60% on the part of the appellant/claimant who was driving the jeep and 40% on the lorry driver.

3. With regard to the quantum of compensation, Ext.A5 is the wound certificate issued by the Taluk Headquarters Hospital, Kanjirappally which shows the following injuries:

> "1. Lacerated wound over the right frontal region, over the upper aspect of the right upper eye lid, over the right cheek and over the chin.
>
> 2. Bleeding from the right nostril.
>
> 3. Multiple lacerated injuries over the upper aspect of the right elbow joint and posterior aspect of the elbow region on the right side.

4. Multiple abrasions over the right wrist and front of the neck.

5. Fracture of the lower end of the right thigh bone."

It is seen from Ext.A6 discharge card and Ext.A11 medical certificate that the fracture was a comminuted one. The petitioner was treated with open reduction and internal fixation of femur fracture by 'K' nailing. He was treated as an inpatient for 18 days. He was treated as an outpatient on three occasions. He was advised non-weight bearing till 15.4.1994 and protected partial weight bearing till 16.6.1997. The tribunal has awarded Rs.500/- towards extra nourishment. PW2 was the bystander for ten months. Considering the evidence Rs.3,000/- was awarded as bystander's expenses. Ext.A7 series medical bills produced are for Rs.3,106.17. The tribunal awarded the above amount. His claim for medical treatment was Rs.10,000/-. We are of the opinion that there will be many expenses which are not reflected in the bills. We award Rs.5,000/- for medical expenses. The tribunal has awarded Rs.25,000/- for pain and suffering. Considering the nature of injuries and long treatment we are of the opinion that no interference is required as tribunal has awarded Rs.25,000/- for pain and suffering and loss of amenities together. Petitioner was working as instructor in a driving school.

According to him, his net salary was Rs.4,000/- and relying on Ext.A8 tribunal fixed Rs.1,500/- only as his monthly income. Since he was working as an instructor in a driving school, at least, Rs.2,500/- ought to have been fixed as the monthly income instead of Rs.1,500/-. He was maintaining a family. The accident occurred in 1997. The tribunal found that he was under treatment for seven months and was unable to do any work during the period. The tribunal awarded Rs.10,500/- towards loss of income. Therefore, he is entitled to Rs.7,000/- more under the head loss of income and total amount payable is Rs.17,500/-. Doctor certified 7% disability. Tribunal has awarded Rs.10,000/- for permanent disability and Rs.10,000/- for loss of earning capacity - total Rs.20,000/-. Considering the nature of injuries etc., we are of the opinion that no enhancement is required in the above assessment. Thus, total amount payable will be Rs.71,000/- out of which 60% has to be deducted and he is entitled to only for 40% of the amount. So, the compensation payable will be Rs.28,400/-. We are also of the opinion that even the compensation payable under section 140 was also Rs.25,000/-. The above Rs.28,400/- should be deposited by the third respondent insurance

company with 7.5 % interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

**J.B.Koshy**
**Judge**

**K. Hema**
**Judge**

vaa

**J.B. KOSHY AND**
**K.HEMA,JJ.**

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M.F.A. No. 1327 of 2002

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**Judgment**

Dated:15th November, 2007